

**STATEMENT**

**OF**

**COMMISSIONER JAMES W. ZIGLAR  
U.S. IMMIGRATION & NATURALIZATION SERVICE**

**BEFORE THE**

**U.S HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

**REGARDING  
RESTRUCTURING THE INS**

**TUESDAY, APRIL 9, 2002**

**2141 RAYBURN HOUSE OFFICE BUILDING  
3:00 P.M.**

Mr. Chairman and members of the Committee,

I appreciate this opportunity to testify today on reforming and restructuring the Immigration and Naturalization Service (INS).

Mr. Chairman, I have a vision for a reformed INS: It is to ensure that every individual who comes into contact with the Immigration and Naturalization Service, regardless of their citizenship, the circumstances of their birth or any other distinguishing characteristic, will be treated with respect and dignity, and without any hint of bias or discrimination. Mr. Chairman, every sovereign nation has a right—indeed a duty—to protect the integrity of its borders. A reformed INS will continue to protect our borders and defend Americans from terrorism and other national security threats.

This is not an easy mission, and it is one made more difficult by the agency's structure. More than five hundred million inspections are conducted at our ports of entry every year, and hundreds of millions enter the United States without visas, through visa waiver programs or other exemptions from the normal visa process; the INS has roughly 5,000 Inspectors to process these hundreds of millions of visitors who arrive at our borders every year. INS has approximately 2,000 investigators throughout the country to deal with persons who have entered illegally, are criminal aliens, or have overstayed their visas or otherwise have violated the terms of their status as visitors to the United States. The agency has experienced explosive growth over the past several years, growing at an annual rate of more than 10 to 20%, including a doubling in the size of its workforce since 1994. In the past 8 years alone, more people have applied for naturalization than in the previous 40 years combined.

There is no debate as to whether the INS must be reformed. When I was asked to take this job, the Attorney General and President set forth two goals: restructure the agency and increase its efficiency. There is no confusion about the mission; the issue is simply how it can be done quickly, efficiently, and with the appropriate degree of flexibility.

Although we are not in a position to express a formal position on H.R. 3231 beyond the comments included in my statement, we note that the Administration's restructuring proposal and H.R. 3231 share important common goals.

First, both plans recognize the importance of separating enforcement and services in such a manner as to address competing priorities and problematic chains of command. Thus, both provide for separate enforcement and services functions.

Second, both recognize that some functions, such as that of a Chief Financial Officer, are better performed reporting directly to agency leadership, rather than within one of the two bureaus.

In addition, H.R. 3231 will provide important buyout and relocation authority, which is important for restructuring efforts.

I have heard loud and clear the many concerns from Members of Congress about the INS. As I stated at the hearing before the Immigration and Claims Subcommittee on March 19, I want to use the events of recent weeks as a catalyst to institute the changes and reforms urgently needed at the INS. The concurrence by the House and Senate Appropriations Committees that were received on March 18 and March 21, respectively have given us the green light to move forward with the Administration's Restructuring Plan.

After the incident involving the I-20 notices sent to Huffman Aviation, I put forward a series of

significant regulatory and process changes to the student visa program. I also made a series of high-level personnel moves at the INS to reshape our management team. After the recent incident in Norfolk, Virginia, where indications are that procedures on waivers for four Pakistani crewmen were not followed, I moved quickly to reassign the supervising officer, pending an investigation, and instituted a zero-tolerance policy on failure to follow policy from headquarters.

Mr. Chairman, we want to work with you and the Congress to complete a restructuring that effectively addresses your concerns and at the same time gives the Attorney General and the Department of Justice the flexibility to adjust to ever-changing needs and circumstances with respect to the enforcement of immigration laws and the provision of immigration services.

In my testimony today, I will address first the Administration's restructuring proposal. I then will address certain reforms that are proposed in H.R. 3231 and why they raise concerns for the agency.

### **Administration's Restructuring Proposal**

In November, the Attorney General announced the start of a reorganization of the Department of Justice to reorient DOJ as a department whose primary responsibility is to defend Americans against terrorism and other national security threats. At that time, he stated that the administrative restructuring of the INS is a major part of that reorganization. As you know, we sent the Congress an administrative Restructuring Proposal for the INS last November, and as noted earlier in late March, the Department of Justice received letters from the House and Senate Commerce, Justice, State Appropriations Subcommittees concurring in INS moving forward with that full restructuring plan.

The INS restructuring plan is a fundamental reform that splits service and enforcement into two bureaus. It will clarify and streamline the chain of command at INS and increase accountability. While it is true that past Administrations have restructured some parts of the agency, these partial reorganizations have not fundamentally changed the way the agency does its business at the field level or focused on the core issue of competing and occasionally conflicting service and enforcement missions. Moreover, due to an unprecedented growth in staffing and expansion of its mission, the agency is very different today than in the past, and the merits of the current proposal should not be judged against those with different and, indeed, narrower aims.

We are moving quickly on key steps to restructure the Agency. We are in the process of:

- Establishing a direct reporting relationship from Chief Patrol Agents in the field to the Border Patrol Chief in Headquarters;
- Announced that we will establish an Office of Juvenile Affairs reporting directly to the Commissioner with direct line authority over officers in the field making and implementing decisions regarding juveniles;
- Advertising for the position of Chief Information Officer (CIO). The CIO will ensure the effective integration and coordination of data systems of mutual interest to the bureaus of Service and Enforcement as well as other federal agencies;
- Advertising for the position of Chief Financial Officer. The CFO will be responsible for ensuring sound fiscal management reporting directly to agency leadership;
- Planning has begun for the Headquarters Detention and Removal Program to oversee facility management, care of detainees, management of detention standards and bed

space allocations at all INS owned and operated Service Processing facilities; and

- Begun the process of realigning reporting relationships in the adjudications arena.

The Office of Restructuring, which was established to move the restructuring initiative, will implement Headquarters restructuring this fiscal year. We will create the new Bureaus of Immigration Services and Immigration Enforcement by realigning reporting relationships and streamlining chains of command. The actions already taken, as noted above, reflect the first phases of the creation of separate bureaus. Field planning will entail a detailed analysis of facilities and workload distribution and development of a comprehensive human resource plan for making the necessary personnel adjustments. As part of field implementation, to be completed in 2003, we will abolish the existing Regional and District offices, as well as the positions of Regional and District Directors, and establish the new services and enforcement areas.

Mr. Chairman, the restructuring of INS is designed to address key problems identified by Members of Congress and the public. Two interrelated criticisms that have been identified are: 1) that the current INS structure incorporates a mixed mission, and 2) that the agency lacks clear chains of command. Currently, the field structure of the INS centers around District Directors, who report to Regional Directors, who in turn report to the Executive Associate Commissioner for Field Operations. All of these individuals have dual service and enforcement responsibilities. The Administration's plan changes that. Under the restructuring plan, the positions of District Directors and Regional Directors will be eliminated. In their place, the Border Patrol, Inspections, Investigations and Intelligence components of INS will be under the command of the Chief of the Border Patrol and Interior Enforcement Division, who will report to the Executive Commissioner for Immigration Enforcement. The International Division and the Detention and Removals Division will also report directly to the Executive Commissioner for Immigration Enforcement. Services personnel will report through a Services chain of command, leading up to the Executive Commissioner for Immigration Services. A key element of the restructuring is to provide clarity of function by improving accountability and professionalism through a clear and understandable chain of command with specific expertise at all levels.

Another significant problem at INS is information technology. The restructuring plan seeks to address part of this problem by establishing the new position of Chief Information Officer (CIO). The plan establishes an Information Coordinator, working through the CIO, to ensure that Enforcement and Services Bureau personnel maintain necessary and appropriate access to interrelated enforcement and services data.

Concerns have been raised that INS enforcement does not always respond in the most appropriate or timely manner. This plan will enhance immigration law enforcement and improve our ability to respond to national security threats by eliminating current layers of reporting and the dual service and enforcement responsibilities out in the field. For example, the 21 Border Patrol Sector Chiefs now report to three Regional Directors rather than straight to the Chief of the Border Patrol. In some cases, they were reporting to persons with no law enforcement background. These extra reporting layers at times prevented rapid deployment and redeployment of agents and equipment in the field. The current reporting structure for Investigations, Inspections and the Detention and Removal program is even more problematic as those components report through District Directors and Regional Directors before reaching headquarters, and may be reporting to individuals without the requisite experience in those programs.

As noted earlier, a key step in restructuring on the enforcement side will be accomplished by requiring the 21 Border Patrol Sector Chiefs to report straight to headquarters to the Chief of the Border Patrol. In addition, under our proposal, there will be nine Enforcement Areas, where a Special Agent in Charge (SAC) for Investigations and an Area Port Director for Inspections in each

of the areas will be co-located for coordination and administrative purposes. Special Agents in Charge and Area Port Directors will report to the Chief of the Border Patrol and Interior Enforcement Division. Similarly, the Detention and Removal program will have an independent chain of command that will support the Border Patrol, Inspections and Investigations programs and continue to detain and remove illegal aliens from the United States.

Another problem that has been identified is INS' treatment of juveniles who come into our custody. The restructuring establishes an Office of Juvenile Affairs, whose director will have the necessary authority to ensure that custody and placement decisions with respect to juveniles are appropriate.

Finally, complaints about INS service performance have been long-standing. Under the restructuring, service will improve because the chain of command will be clarified and streamlined. Officers and staff in the field will report to their respective program managers directly without being judged or adversely affected by competing interests, such as is now the case in District and Regional offices. Eliminating the District Director and Regional Director positions in this chain of command will increase accountability and establish clearer points of contact for immigrants, U.S. citizens and Congressional offices. The six Area Directors, who will focus solely on adjudications and related service functions, will have substantial authority to control activities within their area.

#### **H.R. 3231**

Mr. Chairman, as noted at the outset of my testimony, we recognize and appreciate the positive aspects of H.R. 3231, including the separation of the service and enforcement functions, buyout authority, recognition of the importance of functions that serve both services and enforcement purposes, and an emphasis on customer service, such as establishing an Ombudsman position. We have, however, some concerns about H.R. 3231, particularly with regard to the supervisory authority of the Attorney General and the new Associate Attorney General for Immigration Affairs (AAGIA). We hope that these issues can be addressed as the legislation moves forward.

Under current law, the Attorney General's exercise of authority over the Commissioner, or other Department officials, is based upon the principle of delegation. The Attorney General has delegated substantial authority to the Commissioner, but retains the ultimate statutory responsibility to administer and enforce the immigration laws under section 103 of the Immigration and Nationality Act (INA). In H.R. 3231, this principle is substantially weakened, because it is the subordinate officials who are vested with the statutory authority over immigration services and enforcement, rather than their supervisors.

The bill statutorily transfers from the INS Commissioner to the Director of the Services Bureau the immigration service functions, and from the Commissioner to the Director of the Enforcement Bureau the enforcement functions. Therefore, although the Associate Attorney General for Immigration Affairs has nominal supervisory responsibility over the Directors, they in fact have substantially greater statutory functions than their nominal supervisor.

As the functions that would be transferred to the Directors by statute are currently regulatory, not statutory, H.R. 3231 would transform the current delegation of the Attorney General's authority by regulation into a direct statutory assignment of functions to lower-level Department officials. These provisions potentially could call into question the ultimate authority of the Attorney General, acting through the Associate Attorney General for Immigration Affairs, to direct and control the immigration services and enforcement functions. Although technical drafting concerns regarding transfers of functions may be solved through appropriate technical amendment, these provisions raise substantive concerns as well regarding the intended scope of the Associate Attorney General

for Immigration Affairs' authority to direct and control the service and enforcement bureaus.

The issue of accountability further arises in this respect, since the Attorney General and the new AAGIA would be nominated by the President and confirmed by the Senate, whereas the specific experience requirements of H.R. 3231 make it almost assured that career immigration officials would occupy the posts of Directors of the Service and Enforcement Bureaus. The experience requirement additionally for the AAGIA also uniquely limits the President's appointments authority. These constraints on the President's Appointments Power raise constitutional as well as prudential concerns.

Another issue the bill raises is flexibility. The statutory establishment of numerous positions from the national level down to the local level would circumscribe the ability of the Attorney General and Department of Justice to restructure and reorganize these offices as needs may dictate without future legislation. This, as well as some other provisions, would uniquely limit the ability of current and future Attorneys General or Presidents to reorganize operations related to administering our immigration laws. Retaining the ability to respond quickly and thoroughly to changed circumstances, as well as to trends that develop over time, is an advantage of administrative restructuring or of a less detailed bill.

Finally, while an immigration services customer relations office is a shared feature of H.R. 3231 and the Administration's restructuring plan, the reporting requirements of the Ombudsman provisions in the House bill raise separation of powers concerns. Under H.R. 3231, the Ombudsman is to issue reports and legislative recommendations directly to Congress without the Department of Justice or other executive branch officials being permitted to examine the reports prior to issuance. By constraining executive branch channels of review in this manner, this provision raises a serious constitutional question with respect to its impairment of the President's ability to oversee the functions of an Executive Department and to "take care that the laws be faithfully executed." Art. II, sec. 3.

The restructuring of the INS is an important issue. The aftermath of the attacks on the Pentagon and World Trade Center was an incredibly tense time for everyone. Any agency leader needs to be able to make quick decisions regarding staff deployment, directing the investigation and detention of possible terrorists and their accomplices, and formulating new regulations and procedures with regard to the INS' participation in the investigation of and response to the attack. It is crucial to preserve the ability to respond quickly to changing circumstances and to maintain a strong leader at the top to allow swift and decisive action, particularly in times of crisis.

Mr. Chairman, you and this Administration share exactly the same goal—and that is to improve the effectiveness and efficiency of enforcement of our immigration laws and service to those who are entitled to benefits under those same laws. We may differ as to the specific approach in reaching that shared goal, but I hope and believe that we will be able to find common ground in realizing our objective.